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SUBJECT: NIGERIAN SENATE DEBATES ELECTORAL REFORMS

Classified By: Political Counselor James P. McAnulty
for reasons in Sections 1.4 (d) and (d).

SUMMARY

11. (C) At a legislative retreat November 9 to 12 in Enugu, Nigerian senators debated electoral reform issues and challenges. Senate President Mark insisted that the current system needs only "fine-tuning," but there was general agreement that INEC should become financially independent and electoral disputes should be resolved in the courts before putative winners take office. INEC Committee Chairperson Senator Isiaka Adeleke told PolOff the retreat would not have focused on electoral reform except for the emphasis by POTUS and the Secretary on the importance of credible elections. Concerns about voter lists, the difficulties of achieving substantive reforms, and the importance of visible international support for free and fair elections are emerging as constant themes from our interlocutors across the country. END SUMMARY.

PERCEPTIONS ON THE NEED FOR REFORM

12. (C) At a November 9 to 12 retreat on "Legislating for an Enduring Electoral System in Nigeria," Nigerian senators discussed and debated proposed electoral reforms and amendments to the 1999 Nigerian Constitution. Senate President David Mark of the ruling People's Democratic Party (PDP) invited PolOff and a Canadian colleague to attend the retreat, and previewed with them the night before his key themes for the retreat. Mark defended the performance of the INEC head chairman, a close friend, averring that INEC subordinates had committed excesses without the concurrence or knowledge of the chairperson. Canadian PolOff noted the importance of ministerial accountability for the credibility of any system, and related instances in Canadian and British politics where ministers had quit over wrongdoing by others; Mark was unconvinced.

MARK: REMOVAL OF INEC CHAIR NOT SYNONYMOUS WITH REFORM

13. (C) In his opening remarks at the retreat, Mark admitted that the country's electoral system has "room for improvement," but said it was "certainly not the worst in the world, as some self-styled analysts would want us to believe." He emphasized that the removal of the INEC chairperson did not represent reform, and argued that Nigeria needs only "fine-tuning" rather than a complete overhaul to

ensure good elections. Mark noted that "operators" in the process must possess the political will to "play by the rules."

14. (SBU) Iyabo Obasanjo Bello (PDP) commented on the disconnect between citizens and the political process. She explained, "No Nigerian thinks their vote elected me or anybody else." While some reforms might be largely cosmetic, she added, they are essential to restore the "trust of the people."

LESSONS LEARNED FROM THE 1993 ELECTION

15. (SBU) Professor, Legislative Development Center Executive Chairperson, and former Senator Jonathan Silas Zwingina (PDP) (invited to speak at the retreat) highlighted the vulnerability of voter registration lists as the greatest threat to credible elections. Referring to the 1993 presidential election, Zwingina remarked that Nigeria should adopt features that helped make that election, in the view of many, the most fair and transparent in Nigerian history. Such features included a "fixed" accreditation (registration) time for voters, use of the "secret, open-ballot" system, and immediate, transparent collation and announcement of results.

16. (SBU) Zwingina explained that, in 1993, authorities had established a three-hour fixed accreditation time (from 9 a.m. until 12 noon), administered simultaneously, across the nation on election day, during which all eligible voters assembled at their designated polling stations and underwent

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a public count. As a result, everyone knew the correct total of voters at each precinct. Authorities did not allow anyone to join the queue after the process began. This system, he said, prevented use of thugs and "voters for hire" whom party officials could transport from polling station to polling station to vote multiple times.

17. (SBU) As this system required all political actors, including party leaders, activists, candidates, officials, police, and ordinary voters, to show up at polling stations across the country simultaneously, they could not engage in voter intimidation or other nefarious activities during registration and voting. The process prohibited movement between polling stations, even characterizing such activities as crimes. Immediately after voter registration, voters queued in single lines and received ballot papers, which they then marked secretly and folded in a private area of the polling station and then deposited openly into ballot boxes in a public areas of the polling station. After all voters deposited their ballots, electoral officials counted the ballots and announced the results in front of all accredited voters who had witnessed the entire process. Electoral officials, party agents, the police, and State Security Service representatives endorsed and signed the results sheets in front of everyone.

18. (SBU) Zwingina declared that the current "open-ended" accreditation system was vulnerable to widespread manipulation, and advocated a constitutional amendment mandating the automatic de-registration of any party that failed to garner at least 10 percent of the popular vote in an election. He argued that a reduced number of political parties and adoption of internal democracy would serve to reduce electoral violence. He suggested penalties for media houses that announced results not authenticated by the electoral body, and encouraged greater use of international, electoral observers.

BURDEN OF PROOF IN ELECTORAL CASES

¶9. (SBU) Senators generally agreed that the preponderance of proof should go beyond probability and should rest on empirical evidence. Senate Minority Leader Maina Ma'aji Lawan of the All Nigeria People's Party (ANPP) expressed frustration with the "status quo," in which petitioners lack ready access to INEC documents that could support their cases. INEC officials, he charged, could select which information best supported the results that they had already declared. Deputy Senate Minority Leader Adeleke Mamora of the Action Congress (AC) Party noted that INEC officials had deliberately refused to provide documents in electoral cases, even when ordered to do so by the courts. Mamora proposed that if a petitioner satisfactorily established that irregularities existed in given elections, the burden of proof should shift to INEC to show that such irregularities did not change the outcome of the election. Former Chief Justice Mohammed Lawal Uwais (also invited to address the Senators) acknowledged that ERC members suggested shifting the burden of proof to INEC, given the electoral body's conduct in electoral cases. He pointed to technicalities and exceptions in the existing Evidence Act that required review and correction.

TIME LIMITS FOR RESOLUTION OF ELECTORAL DISPUTES
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¶10. (SBU) Uwais explained that recent, lengthy delays in resolving election cases led ERC members to advocate amending the constitution to require initial judgments in writing within 120 days, and resolution of appeals within another 60 days. He said the ERC recommended injunctions against the swearing-in of any candidate until the settling of all legal challenges in the associated election. Uwais explained that the ERC recommended a six-month limit due to the volume of electoral challenges, simultaneous hearing of challenges by the courts, and the desire to prevent any petitions from becoming "time-barred" within an overburdened judicial system. Uwais concluded that establishing time limits for final resolution of electoral petitions was "desirable, feasible, and practical."

¶11. (SBU) Senator Izunaso asserted that the judiciary presents the "greatest threat to democracy" today. Grace Bent (PDP) lamented the waste of expense and time experienced

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by election winners and the courts, since, in her view, every loser filed a petition "almost automatically." Senator Bassey Ewa-Henshaw (PDP) suggested discouraging frivolous electoral petitions by requiring losing candidates to deposit a predetermined amount at the time of filing a petition, to be recovered only if the courts judged their petition to be credible.

THE "STAY-PUT DIRECTIVE" AND "INCUMBENCY FACTOR"

¶12. (SBU) Uwais examined the "stay-put directive" in Section 149 of the 2006 Electoral Act, which requires that, even when a disputed election exists, the "candidate returned as elected" (i.e., declared as the victor by INEC), shall "remain in office pending the determination of the appeal." Uwais characterized this provision as "highly unpopular" with the public, and concurred that the directive gave office holders "undue advantage" over opponents, as they often illegally used public funds to prosecute or defend the petition or appeal. Moreover, Uwais alleged, incumbents frequently used the state apparatus, including the media and security agencies, to ensure victories in "rerun" elections.

PROPORTIONAL REPRESENTATION VERSUS "FIRST-PAST-THE-POST"

¶13. (SBU) Retreat participants debated the merits of a proposed proportional representation system versus the current "first-past-the-post" system. Drugs, Narcotics, and Financial Crimes Committee Chairperson Senator Sola Akinyede (PDP) noted the potential for abuse under a system of proportional representation (PR) through nepotism and corruption, and the award of positions by the party to the highest bidder. He questioned the fairness of a scenario in which a party winning two-thirds of the vote having its representation decreased to 53 percent of the seats under proportional representation. Ahmad Lawan (ANPP) expressed doubt that proportional representation would work well in Nigeria, given the existing culture of "haves and have-nots."

¶14. (SBU) Professor and former Ambassador to the U.S. Jubril Aminu (PDP) opined that the strength of the executive branch would undercut proportional representation. He declared that "we know where power lies in a presidential system, and it is not in the National Assembly." One senator described the executive branch's incomplete implementation of the budget as "a joke."

¶15. (C) At the end of the second day, Senate President Mark declared that senators remained "very interested in electoral reform," and predicted that actions ultimately taken "will reflect the true mood of the public."

COMMENT

¶16. (C) Many senators noted to PolOffs the magnitude of the problems Nigeria faces in developing and implementing electoral reforms. INEC Committee Chairperson Senator Isiaka Adeleke added that the retreat would not have focused on reform as its main agenda item except for the emphasis by POTUS and the Secretary on credible elections during their respective visits to Accra and Abuja earlier this year; he also urged the international community to press the GON to enact necessary reforms. Concerns about voter lists, the difficulty of achieving far-reaching reforms, and the importance of visible international support for free and fair elections are emerging as constant themes from our interlocutors across the country.

¶17. (U) Embassy coordinated this telegram with ConGen Lagos.

SANDERS